H.R. 2830, The Pension Protection Act of 2005

<u>**SECTION-BY-SECTION**</u>

Sec. 1. Short title and table of contents.

<u>This Act may be cited as the Pension Protection Act of 2005.</u>

TITLE I—REFORM OF FUNDING RULES FOR SINGLE EMPLOYER DEFINED BENEFIT PENSION PLANS

Subtitle A—Amendments to Employee Retirement Income Security Act of 1974

Sec. 101. Minimum funding standards.

Section 101 repeals sections 302 - 306 of the Employee Retirement Income Security Act of 1974 and instead establishes new minimum funding standards that single employer defined benefit plans must meet. These contributions must be paid by the employer(s) responsible for making contributions to the plan. The bill also provides for waivers to the minimum funding standards in the case of business hardship when an employer is operating at an economic loss, when there is substantial unemployment or under employment in the trade or business, when the sales and profits of the industry concerned are depressed or declining, and when it is reasonable to conclude the plan will be continued only if the waiver is granted. The application for a waiver must be submitted to the Secretary of the Treasury no later than 2½ months after the close of the plan year. Prior to the granting of a waiver, a notice is required to be provided to each participant, beneficiary, and employee organization of the filing of the application of the waiver.

Sec. 102. Funding rules for single-employer defined benefit pension plans.

Under section 102, a single-employer plan's minimum required contribution for a plan year is the target normal cost of the plan for the year plus any shortfall amortization charge (if applicable) for the plan year. The target normal cost of a plan for a plan year is the present value of all liabilities attributable to benefits which are expected to accrue under the plan during the plan year. If a plan's assets (including any pre-funding account and carryover balance) are greater than the plan's funding target (the present value of all liabilities under the plan for the plan year),[1] the minimum required contribution for a plan year is the target normal cost minus any excess assets held by the plan. A shortfall amortization charge applies if a plan has any unfunded liability shortfall as of the first day of any plan year. The shortfall amortization charge for any plan year is the amount necessary to amortize any unfunded liability shortfall over seven plan years, using the effective rate of interest for the plan. Unfunded liability shortfall is defined as the excess

[1] A plan's funding target attainment percentage is the ratio, expresses as a percentage, which the value of plan assets for the year bears to the funding target for the year.

of a plan's liabilities for the plan year over the value of plan assets for any plan year (not including the value of any assets held in a plan's pre-funding account and carryover balance). If a plan's assets (including any carryover balance attributable to the funding rules prior to this bill plus any assets held in the plan's pre-funding account) for any plan year exceed the plan's liabilities for the plan year, any shortfall amortization charge applicable for any previous plan year is reduced to zero. If there have been other changes in plan provisions attributable to plan amendments, such amendments must also be amortized over a seven-year period. For purposes of determining minimum required contributions, a plan must also take into account any waiver amortization charge for a plan year.

Credit for excess assets: If the value of plan assets which are held by the plan immediately before the valuation date exceed the funding target of the plan for the plan year, the minimum required contribution with respect to the plan is the target normal cost, reduced by the excess assets.

Reduction of minimum required contribution by pre-funding account balance: Any plan assets that are in a plan as a result of contributions made in excess of a plan's required minimum contribution prior to the date of enactment of the bill remain intact. These additional plan assets are referred to as a carryover credit balance. Any new contributions made in excess of the minimum required contribution for a plan will be credited to a pre-funding account. Each year, the pre-funding account and the carryover credit balance must reflect the same fair market value of gains and losses as the assets which a plan may experience each year. [2] Any use of the pre-funding account is prohibited for plans that are less than 80 percent funded.

To determine whether a plan meets its funding target for a plan year, plan assets will not be reduced by the value of any carryover credit balance or any new pre-funding account balance. Plan assets are required to be reduced by both the carryover credit balance and the pre-funding account balance for the following calculations: to determine whether the plan's target normal cost can be reduced by any excess assets credit for a plan that is over 100 percent funded; to determine the shortfall amortization charge for a plan year (if required to be made); to determine whether the plan is in at-risk status; to determine whether there is an increase in quarterly payments of a plan; and to determine whether any benefit limitations apply. For purposes of determining whether a plan is at least 80 percent funded and can apply the pre-funding balance to offset its minimum required contribution for a plan year, such pre-funding balance is subtracted from the plan's assets. Plan assets are not reduced by any carryover credit balance in determining whether a plan is at least 80 percent funded. Plan assets are not reduced by any carryover credit balance for purposes of calculating a plan's target normal cost for the plan year if the plan is funded above 80 percent. Any balance of in the pre-funding account, as well as any carryover credit balance, is reduced each year by the amount of reduction of the minimum required contribution.

[2] The plan assets will continue to be actuarially adjusted.

A plan cannot use the carryover balance to reduce the minimum required contribution for a plan if it is also used to increase plan assets in order to avoid any shortfall amortization charge in the same plan year. In addition, any carryover balance must be applied to reduce a plan's minimum required contribution before any pre-funding account balance can be applied.

Valuation date for plan assets and liabilities: The valuation date for plans with greater than 500 participants is the first day of the plan year. If a plan has less than 500 participants, the plan may choose any day during the plan year as its valuation date.

Determining value of plan assets: The value of plan assets is determined on the basis of any reasonable actuarial method of valuation which takes into account the fair market value of assets. If assets are averaged, any method used by the plan may not provide for averaging of such values over more than three plan years. In addition, the averaging method used by the plan may not result in a valuation of averaged assets greater than 110 percent of the assets' fair market value.

Accounting for contribution receipts: For purposes of determining the value of plan assets for any current plan year, any contributions allocable to amounts owed for the previous year that are made after the plan's valuation date for the current plan year are taken into account. However, any contributions made to any plan for the current plan year are not taken into account and any interest earned on such contributions must be disregarded for calculating the value of plan assets.

Accounting for plan liabilities: In determining the value of liabilities under a plan for a plan year, liabilities attributable to benefits accrued as of the first day of the plan year are taken into account. Any benefits which are expected to accrue during a plan year are not taken into account. If a plan is collectively bargained, any anticipated benefit increases scheduled to take effect during the plan year are included as part of a plan's liabilities for the plan year.

Actuarial assumptions and methods: For purposes of calculating a plan's liabilities for a plan year, the effective interest rate of a plan must be used. The effective interest rate of a plan is the rate of interest which, if used to determine the present value of the plan's liabilities, would result in an amount equal to the funding target of the plan for a plan year.

For purposes of determining the plan's funding target, the interest rates used in calculating the present value of the plan's liabilities are based on three segment rates applied to a plan's short-term, mid-term, and long-term liabilities. Short-term liabilities are plan liabilities which are payable within five years. Mid-term liabilities are plan liabilities which are payable between six and twenty years. Long-term liabilities are plan liabilities which are payable after twenty years. The segment rates, with respect to any month, are determined by the Secretary of the Treasury on the basis of the appropriate corporate bond yield curve. The first segment rate is based on the portion of the corporate bond yield curve for yields of bonds maturing in five years or less; the second segment rate is based on the portion of the corporate bond yield curve for yields of bonds maturing between six and twenty years; and the third segment rate is based on the corporate bond yield curve for yields of bonds maturing over 20 years.

The Secretary of the Treasury will develop the corporate bond yield curve which is based on a three-year weighted average of yields on investment grade corporate bonds.[3] The Secretary must publish each month the corporate bond yield curve and each segment rate. The Secretary must also publish a description of the methodology used to determine the corporate bond yield curve and the segment rates which is sufficiently detailed to enable plans to make reasonable projections regarding the yield curve and segment rates for future months based on the plan's projection of future interest rates.

Transition period: The interest rate transition will be the following: for plan year 2006, a plan is required to use of 1/3 of the modified yield curve and 2/3 of the current rate. For plan year 2007, a plan is required to use of 2/3 of the modified yield curve and 1/3 of the current rate. For plan year 2008, all plans must use the modified yield curve for calculating pension liabilities.

Mortality table: In order to determine the present value of liabilities for a plan, the plan must use the RP 2000 Combined Table mortality table using scale AA. The Secretary of Treasury is required to make projected improvements to the table to reflect the actual experience of plans and projected trends in such experience at least once every ten years. The use of the RP 2000 Combined Table is phased in ratably over a five year period.

Probability of benefit payments in the form of lump sum or other optional forms: For purposes of determining the present value of a plan's liabilities, the probability that future benefit payments under the plan, including lump sums and other optional forms of benefits, must be taken into account and included in the plan's funding target.

Special rules for at-risk plans: A plan is considered to be "at-risk" if its funded status is less than 60 percent. At-risk liability is based on the same benefits and assumptions as a plan's normal funding target, except that the valuation of those benefits would require the use of certain actuarial assumptions that would take into account the fact that there is a greater likelihood the plan may have to pay benefits on an accelerated basis or terminate. These modified actuarial assumptions are: acceleration in retirement rates using the earliest retirement age and benefits being distributed in a lump sum payment (or in whatever form results in the most valuable benefit). At-risk liability also includes a loading factor of $700 per participant plus four percent of the at-risk liability before the loading factor to reflect the additional administrative cost of purchasing a group annuity if the plan were to terminate. At-risk normal cost is the same as ongoing normal cost, except that at-risk normal cost is calculated using the assumptions that are used for determining at-risk liability. The transition between a plan's normal funding target and its at-risk funding target is five years. In other words, if a plan is less than 60 percent

[3] Under current law interest rates used to calculate pension assets and liabilities are "smoothed," or averaged, over four years. Such smoothing is intended to reduce pension funding volatility and help make contribution requirements more predictable. The bill provides for a three year smoothing of interest rates.

funded for a consecutive period of fewer than five plan years, the plan must pay 20 percent of its at-risk required contribution multiplied by the number of plan years that the plan is less that 60% funded.

Payment of minimum required contributions: The due date for the payment of minimum required contribution for any plan year is 8½ months after the close of the plan year. Any minimum contribution payment made after the valuation date is increased by the effective rate of interest for a plan from the valuation date to the payment date.

Accelerated quarterly contributions: If a plan is less than 100 percent funded in the prior plan year, quarterly contributions are required to be paid by the plan. The minimum required quarterly contribution is increased by the amount equal to the interest on the amount of underpayment. The interest rate used is the excess of 175 percent of the federal mid-term rate over the effective rate of the plan. The deadline for the final contribution for the year is 8 ½ months after the end of the plan year. A contribution made after the valuation date for the year would be credited against the minimum required contribution for the year based on its present value as of the valuation date, discounted from the date actually contributed and determined using the average effective interest rate that applied in the determination of the plan's liabilities.

Imposition of lien where failure to make required contributions: For plans covered by the Pension Benefit Guaranty Corporation ("PBGC") Insurance Program, any plan sponsor who fails to make a required contribution to the plan before the due date of a payment where the unpaid balance of the payment (including interest), when added to the aggregate balance of all prior payments not made before the due date (including interest) exceeds $1,000,000, a lien in favor of the plan upon all property and rights to property, whether real or personal, belonging to the plan sponsor and any other controlled group member in the amount equal to the total aggregate unpaid balance of the contributions. The plan sponsor must notify the PBGC of such failure within 10 days of the due date for the required contribution. The lien begins on the due date for the required contribution payment and continues until the last day of the first plan year in which the plan ceases to have an aggregate balance of prior missed payments in excess of $1,000,000.

Qualified transfers to health benefit accounts: This section allows any plan assets over 100 percent of a plan's funding target but not above 125 percent of the sum of the target liability amount and the target normal cost to be transferred to a qualified welfare benefit plan for the purpose of providing certain health benefits. Any transfer of plan assets made shall result in a reduction of plan assets by the amount of the transfer.

Sec. 103. Funding-based limitations on distributions and benefit accruals under Single employer plans.

Section 103 prohibits benefits payable due to a plant shutdown or any other unpredictable contingent event. An unpredictable contingent event is defined as any event *other than* the attainment of any age, performance of any service, receipt or derivation of any compensation, the occurrence of death or disability, or any event which is reasonably and reliably predictable, as determined by the Secretary of Treasury.

This section further provides that if a plan is less than 80 percent funded as of the plan's valuation date, the plan may not adopt an amendment that has the effect of increasing the plan's liabilities by reason of increases in benefits, establishment of new benefits, a change in the rate of benefit accrual, or any change in the rate at which benefits become non-forfeitable. Subject to this general rule, a plan may avail itself of the following exceptions: (a) if a plan is under 80 percent funded in a plan year, a plan sponsor may adopt an amendment which increases plan liabilities only if the plan sponsor makes a contribution to the plan in that year equal to the amount of the increase in the minimum required contribution attributable to the plan amendment and the amount of the increase in the plan's funding target; or (b) if a plan is over 80 percent funded in a plan year, a plan sponsor may adopt an amendment which increases plan liabilities to the extent that the plan is no longer funded at 80 percent if the plan sponsor makes a contribution in the amount necessary to ensure that the plan is at least 80 percent funded. This provision is not applicable to a new plan for the first five years.

Section 103 prohibits lump sum distributions or any other accelerated form of benefits if a plan is less than 80 percent funded as of the plan's valuation date. There is a five year phase-in of this provision. The bill prohibits all future benefit accruals for plans that are less than 60 percent funded. This provision does not apply to a new plan for the first five plan years. If a plan is subject to any of the above benefit limitations and restrictions, the plan must provide notice to all participants and beneficiaries within such time that the plan sponsor knew or should have know that the plan would be subject to the benefit limitations.

Timing rules to implement limitations: A series of special timing rules apply for determining whether a plan's funded percentage is below one of the thresholds for applying the benefit limitation thresholds, based on annual certifications that are to be provided by the plan actuary. If a plan was subject to a benefit limitation in the prior year, then the funding percentage is presumed not to have improved in the current year until the plan actuary certifies that the funded status at the valuation date for the current plan year has improved sufficiently so that the benefit limitation does not apply for the current year. If a benefit limitation did not apply in the prior year, but the funding percentage for that year was no more than 10 percentage points above the threshold for applying that benefit limitation, then the plan's funding percentage is automatically presumed to have been reduced by 10 percentage points for the current plan year as of the first day of the fourth month of the plan year unless and until the actuary certifies that the funded status is such that the benefit limitation does not apply for the current plan year. If an actuarial certification fails to be completed by the first day of the 10th month of the plan year, then the plan's funding percentage for the plan year is presumed not to exceed 60 percent for the current year for purposes of the benefit limitations.

Restoration of plan benefits: Plans that are frozen or for which lump sums or other accelerated benefit forms are prohibited would be permitted to resume accruals and accelerated benefit forms in a subsequent plan year only by a plan amendment. The plan amendment may be adopted at any time after the first valuation date on which the plan's assets exceed the applicable threshold percentage. If a plan's accruals are ceased by reason of a failure of its actuary to make an appropriate certification, the restoration of such plan benefits does not require a plan amendment.

Notice requirement: The plan administrator must provide notice to plan participants and beneficiaries within 30 days after the plan has become subject to any of the above restrictions. Any failure to provide notice will automatically result in a civil penalty.

Effective date: The benefit limitation provisions apply to a plan after 2006. Exception: in the case of a collectively bargained plan, the benefit limitation provisions apply to plan years beginning the earlier of: the later of: 1.) the date on which the last collective bargaining agreement expires, or 2.) 2009.

Sec. 104. Technical and Conforming Amendments

Section 104 makes technical and conforming changes to the Employment Retirement Income Security Act of 1974.

Subtitle B—Amendments to Internal Revenue Code of 1986

Sec. 111. Minimum funding standards.

Section 111 applies the Internal Revenue Code of 1986 to section 101 of the Pension Protection Act.

Sec. 112. Funding rules for single-employer defined benefit pension plans.

Section 112 applies the Internal Revenue Code of 1986 to section 102 of the Pension Protection Act.

Sec. 113. Funding-based limitations on distributions and benefit accruals under Single employer plans.

Section 113 applies the Internal Revenue Code of 1986 to section 103 of the Pension Protection Act.

Sec. 114. Technical and conforming amendments.

Section 114 applies the Internal Revenue Code of 1986 to section 104 of the Pension Protection Act. An excise tax of 10 percent of the aggregate unpaid minimum required contribution is applied to any unpaid minimum required contribution as of the end of the plan ear. An excise tax of 5 percent is imposed on any multiemployer plan for any accumulated funding deficiency as of the end of the plan year.

Subtitle C—Other Provisions

Sec. 121. Extension of transition rule to pension funding requirements.

Section 121 provides that certain plans sponsored by interstate passenger bus companies are considered to not have a funding shortfall for any plan year. Such plans may also use the plan's own mortality table for purposes of determining any unfunded vested benefits or making any other present value computations with respect to the funding rules.

Sec. 122. Treatment of nonqualified deferred compensation plans when employer defined benefit plan is in at-risk status.

Section 122 provides that if a qualified plan is less than 60 percent funded, special rules would apply, and funding of nonqualified deferred compensation arrangements will become restricted. In addition, any assets held in nonqualified deferred compensation arrangements will be included in the gross income of the executives, along with a penalty.

TITLE II—FUNDING RULES FOR MULTIEMPLOYER DEFINED BENEFIT PLANS

Subtitle A—Amendments to Employee Retirement Income Security Act of 1974

Sec. 201. Funding rules for multiemployer defined benefit plans.

Minimum funding standards for multiemployer plans: Section 201 provides that any amounts attributable to unfunded past service liability (for plans established after 1974), plan amendments, investment gains and losses, actuarial changes, and any waived funding deficiency are to be amortized over a fifteen year period. These new amortization periods apply to any amortization bases established after the date of enactment of the bill. Each plan is required to establish a funding standard account, which will be charged or credited with the normal cost of the plan and any amortization shortfall amount. The value of a plan's assets shall be determined on the basis of reasonable actuarial methods of valuation which offer the best estimate of anticipated experience under the plan. Interest must be charged or credited to the funding standard account (as prescribed by the Secretary of the Treasury) at an appropriate rate consistent with the rate or rates of interest used to determine costs under the plan.

Extension of amortization periods: Section 201 provides that the Secretary of the Treasury shall, upon application, automatically extend the period of years required to amortize any unfunded liability of a plan for a period of time not in excess of five years. Prior to the Secretary granting the automatic extension, each applicant is required to provide notice of the filing of the application for such extension to each employee organization and to the PBGC. The Secretary may grant an additional amortization extension for cause, for a period of time not in excess of five years, if he determines that the failure to permit the extension would result in a substantial risk to the voluntary continuation of the plan or a substantial curtailment of pension benefit levels or employee compensation, and would be adverse to the interests of plan participants in the aggregate.

Interest rate for extensions: The rate of interest applicable in connection with an extension granted is the greater of 150 percent of the federal mid-term rate or the rate of interest used under the plan for determining costs.

Restrictions on plan amendments: No plan amendment which increases liabilities of a plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan can be adopted if a waiver or amortization extension is adopted, unless the increase in plan liabilities is de minimis (as determined by the Secretary of the Treasury) or is required as a condition of qualification under the Internal Revenue Code.

Sec. 202. Additional funding rules for mulitemployer plans in endangered or critical status.

Beginning on the first day of each plan year, the plan actuary must certify, within 90 days, to the Secretary of the Treasury whether a plan is in endangered or critical status for a plan year. If certification is not made before the end of the 90-day period, the plan is presumed to be in critical status until the actuary makes a contrary certification. Any certification must take into account any reasonably anticipated employer (and employee) contributions for the current and succeeding plan years.

Notice requirements: If a plan is determined to be an endangered or critical plan, notice must be given no later than 30 days after certification is made that the plan is in endangered or critical status. The notice must be provided to the participants, contributing employers, unions, the Secretary of Labor, the Secretary of the Treasury.

Funding improvement plan: If a plan is certified to be in endangered status for a plan year, the plan sponsor must amend the plan to include a funding improvement plan upon approval by the bargaining parties within 240 days after the date on which the plan is certified to be in endangered status. The funding improvement plan must result in 1/3 projected improvement in any unfunded liability and a prevention of an accumulated funding deficiency during the funding improvement period, taking into account any extension of amortization periods. A summary of the funding improvement plan, as well as any modifications to the plan, must be included in the plan's annual report.

Endangered status: A plan that is considered an endangered plan if the plan has a funded liability percentage of less than 80 percent, or there is a projected deficiency in the any of the next seven plan years (including the current plan year).

Funding improvement period: The funding improvement period is the 10-year period beginning on the earlier of the second anniversary of the date of adoption of the funding improvement plan or the first day of the first plan year in which collective bargaining agreements covering at least 75 percent of active participants have expired.

Actions taken by plan sponsor pending approval: A plan sponsor must take all permitted action (under the terms of the plan and applicable law) necessary to increase the plan's funded liability percentage, and postpone an accumulated funding deficiency by at least one additional year. Such actions may include requesting an amortization extension, use of the shortfall method, modification of the plan's benefit structure and/or the reduction of future benefit accruals, and any other reasonable action consistent with the terms of the plan and applicable law.

Recommendations by a plan sponsor: Within 90 days following a plan's certification, the plan sponsor shall develop and provide to the bargaining parties alternative proposals for revised benefit and contribution structures which, if adopted, may reasonably be expected to meet the funding improvement benchmarks. Proposals by the plan sponsor must include (1) at least one proposal for reductions in the amount of future benefit accruals necessary to achieve the benchmarks, assuming no amendments increasing contributions under the plan (other than amendments increasing contributions necessary to achieve the benchmarks after amendments have reduced future benefit accruals to the maximum extent permitted by law); and (2) at least one proposal for increases in contributions necessary to achieve the benchmarks, assuming no amendments reducing future benefit accruals under the plan.

Upon the request of any bargaining party who employs at least five percent of the active plan participants or represents an employee organization of at least five percent of active participants, the plan sponsor shall provide the parties with information as to other combinations of increases in contributions and reductions in future benefit accruals which would result in achieving the benchmarks.

Maintenance of contributions pending approval: Pending approval of a funding improvement plan by the bargaining parties, the plan may not be amended to reduce the level of contributions for participants not in pay status, to suspend contributions, or to directly or indirectly exclude any younger or newly hired employees from plan participation.

Benefit Restrictions Pending Approval of Funding Improvement Plan: Pending approval of the funding improvement plan, the plan may not be amended to provide additional forms of benefits (e.g. lump sum distributions). In addition, the plan may not adopt any amendment that would result in an increase of plan liabilities by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan, unless the amendment is de minimis (as determined by the Secretary of the Treasury) or is required as a condition of plan qualification under the Internal Revenue Code.

Default if no funding improvement plan adoption: If no funding improvement plan is adopted by the end of the 240-day period, the plan is considered in critical status as of the first day of the succeeding plan year.

Restrictions upon Approval of Funding Improvement Plan: Once a funding improvement plan has been adopted by the bargaining parties, the plan may not be amended so as to be inconsistent with the funding improvement plan or to increase future benefit accruals, unless the plan actuary certifies, after taking into account the proposed increase, that the plan is reasonably expected to meet the funding improvement benchmarks.

Critical Status: A plan is considered to be in critical status if it is an endangered plan that does not comply with requirements appertaining to such plans, or if it is projected to meet one of several tests: (1) if , as of the first day of the plan year, the plan's funded liability percentage is less than 65 percent, and the sum of the market value of assets plus anticipated contributions for the next seven years (including the current plan year) is less than the present value of all nonforfeitable benefits for all participants and beneficiaries projected to be payable under the plan during the next seven years (including the current plan year) plus administrative expenses; (2) if, as of the first day of the plan year, the plan's market value of assets plus anticipated contributions for the next five years (including the current plan year) equals less than five years of the present value of all nonforfeitable benefits projected to be payable during the next five years (including the current plan year) plus administrative expenses; (3) if, as of the first day of the plan year, the plan is less than 65 percent funded and will have an accumulated funding deficiency in the next five yrs (taking into account any amortization extensions); (4) if the plan's normal cost for the year plus interest on the amount of unfunded benefit liabilities under the plan as of the last day of the preceding plan year exceeds the present value of the projected contributions for the current plan year, the present value of the nonforfeitable benefits of inactive participants is greater than the present value of nonforfeitable benefits of active participants, and the plan is projected to have an accumulated funding deficiency in the next five years (including the current plan year) or; (5) if the funded liability percentage of the plan is greater than 65 percent for the current plan year and the plan is projected to have an accumulated funding deficiency during either of the following three plan years.

Funding rules for multiemployer plans in critical status: In any case in which a plan is certified to be in critical status for a plan year, the plan sponsor must amend the plan to include a rehabilitation plan upon approval by the bargaining parties' within 240 days after the date on which the plan is certified to be in endangered status.

Rehabilitation plan: A rehabilitation plan shall consist of plan amendments that would take the plan out of critical status within 10 plan years. The rehabilitation plan may include a combination of contribution increases, expense reductions (including possible mergers), funding relief measures, and/or benefit reductions. These changes must be adopted or proposed by all bargaining parties. If the plan cannot emerge from reorganization within 10 years, the rehabilitation plan must describe alternatives, explain why emergence from reorganization is not feasible, and develop actions that the trustees must take to postpone insolvency. A summary of the rehabilitation plan, as well as any modifications to the plan, must be included in the plan's annual report.

Rehabilitation period: The rehabilitation period is the 10-year period beginning on the earlier of the second anniversary of the date of adoption of the Rehabilitation plan or the first day of the first plan year in which collective bargaining agreements covering at least 75 percent of active participants have expired.

Development of rehabilitation plan: Within 90 days following a plan's certification, the plan sponsor shall develop and provide to the bargaining parties proposals for revised benefit and contribution structures which, if adopted, reasonably would be expected to ensure that the plan is no longer a critical plan. Proposals by the plan sponsor shall include: (1) at least one a proposal for reductions in the amount of future benefit accruals necessary to cause the plan to cease to be in critical status, assuming no amendments increasing contributions under the plan; and (2) at least one proposal for increases in contributions necessary to cause the plan to cease to be in critical status, assuming all future benefit accruals were reduced to the maximum extent permitted by law and the rate of future benefit accruals did not exceed one percent per year.

Upon the joint request of all bargaining parties who employs at least five percent of the active plan participants or represents an employee organization of at least five percent of active participants, the plan sponsor shall provide the parties with information as to other combinations of increases in contributions and reductions in future benefit accruals as may be specified by the bargaining parties.

Default schedule: If no default schedule is adopted by the end of the 240 day period following certification, the plan sponsor shall amend the plan to implement one of the proposal for reductions in the amount of future benefit accruals necessary to cause the plan to cease to be in critical status, assuming no amendments increasing contributions under the plan are made.

Allocation of reductions in future benefit accruals: Any schedule containing reductions in future benefit accruals is applicable to active participants in proportion to the extent to which increases in contributions under the schedule apply to such bargaining party.

Maintenance of contributions pending approval: Pending approval of a rehabilitation plan by the bargaining parties, the plan may not be amended to reduce the level of contributions for participants not in pay status, to suspend contributions, or to directly or indirectly exclude any younger or newly hired employees from plan participation.

Benefit restrictions pending approval of rehabilitation plan: Pending approval of the rehabilitation plan, the plan may not be amended to distribute any optional forms of benefits (e.g. lump sum distributions). In addition, the plan may not adopt any amendment that would result in an increase of plan liabilities by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan, unless the amendment is de minimis (as determined by the Secretary of the Treasury) or is required as a condition of plan qualification.

Deemed withdrawal: The failure of any contributing employer to make the required contributions in compliance with the rehabilitation plan may, at the discretion of the plan sponsor, be treated as a partial or complete withdrawal by that contributing employer from the plan.

Sec. 203. Measures to forestall insolvency of multiemployer plans.

Section 203 provides that if a plan sponsor makes a determination that the plan will be insolvent in any of the next five plan years, the plan sponsor shall make a comparison annually until a determination is made that the plan will not be insolvent in any of the next five plan years.

Sec. 204. Withdrawal liability reforms.

Repeal of ERISA section 4225: The current law provision reduces or subordinates withdrawal liability claims involving employer liquidation and insolvency. The liability of insolvent employers is capped at 50 percent of withdrawal liability plus 50 percent of the remaining liquidation value under current law.

Repeal of ERISA section 4219(c): The current law provision arbitrarily limits an employer's withdrawal liability payments to twenty years of payments.

Partial withdrawal by means of outsourcing: This provision clarifies that an employer who performs the same work formerly covered by a pension plan incurs partial (or complete) withdrawal from the plan if contractor employees are performing the same work as any former employees for whom contributions in the plan used to be made.

Repeal of special trucking industry rule: The current law rule created a withdrawal liability exemption for those companies in the long and short haul trucking industry.

Application of forgiveness rule to plans in building and construction: This rule allows certain plans covering employees in the building and construction industry to elect to adopt a rule under which an employer who withdraws from the plan in a complete or partial termination is not liable to the plan if the employer was a contributing employer for less than five years. This rule is applicable to plans in other industries under current law.

Effective Date: The amendments made by this subsection apply to plan withdrawals occurring on or after January 1, 2006.

Sec. 205. Removal of restrictions with respect to procedures applicable to disputes involving withdrawal liability.

Section 205 provides that a plan sponsor may only make a claim against an employer that the principle purpose of the transaction was to evade or avoid withdrawal liability for transactions occurring in the previous five plan years (2 plan years in the case of an employee with less than 250 employees).

Sec. 206. Technical and conforming amendments.

Section 206 conforms ERISA to the new single employer funding rules.

Subtitle B—Amendments to Internal Revenue Code of 1986

Sec. 211. Funding rules for multiemployer defined benefit plans:

Section 211 applies the Internal Revenue Code of 1986 to section 201 of the Pension Protection Act.

Sec. 212. Additional funding rules for multiemployer plans in endangered or critical status:

Section 212 applies the Internal Revenue Code of 1986 to section 202 of the Pension Protection Act.

TITLE III—OTHER INTEREST-RELATED FUNDING PROVISIONS

Sec. 301. Interest rate assumption for determination of lump sum distributions.

Section 301 amends the Employment Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to provide applicable mortality tables interest rate assumptions for determination of lump sum distributions. The mortality table used for determination of lump sum distributions must be the same mortality table used under section 102 of the Pension Protection Act**.** The three segment rates determined by the Secretary of Treasury's modified yield curve used to calculate a plan's liability under section 102 of the Pension Protection Act must also be used to calculate lump sum distributions for participants. The applicable segment rate used for calculating a participant's lump sum distribution is the same rate that is used to fund for the pension liability of that individual. There is a five-year phase-in of this provision.

Sec. 302. Interest rate assumption for applying benefit limitations to lump sum distributions:

Section 302 provides that, in adjusting a lump sum benefit for purposes of applying the limits on benefits payable under a defined benefit plan, the interest rate used must be not less than the greater of 5.5 percent or the rate that provides a benefit of not more than 105 percent of the benefit that would be provided by the applicable segment rate or the rate of interest specified under the plan.

TITLE IV—IMPROVEMENTS IN PBGC GUARANTEE PROVISIONS

Sec 401. Increases in PBGC Premiums

This section provides for an increase in the PBGC yearly insurance premium paid by plans to the PBGC. Plans less than 80 percent funded will have a three year phase-in of premiums from the current $19 dollars to $30 dollars, per participant per year, including an inflation adjustment each year. Plans 80 percent or higher funded will have a five year phase-in of $19 dollars to $30, including inflation adjustment each year. Section 401 indexes the current law variable rate premium of $9 dollars for every $1000 dollars of unfunded benefits to the national wage index.

TITLE V—DISCLOSURE

Sec. 501. Defined benefit plan funding notices.

Section 501 amends section 101(f) of ERISA to apply such notices all defined benefit (single employer and multiemployer) plans. The notice is now due 90 days after the end of the plan year. The notice must include a statement of the ratio of inactive participants to active participants in the plan. This section also requires that plan sponsors include in the notice a statement of a reasonable estimate of the value of plans assets and projected liabilities as well as the plan's funded ratio. The notice must also include a statement of the plan's funding policy and the asset allocation of investment under the plan (as expressed as a percentage of the total assets).

For multiemployer plans, this notice shall include a summary of any funding improvement plan or rehabilitation plan.

Sec. 502. Additional disclosure requirements.

The bill also provides new requirements for plans file a "Form 5500" report to the Department of Labor. Specifically, this section provides that defined benefit plans (both single and multiemployer plans), will be required to file the ratio of the number of inactive participants to the number of active participants as of the end of the plan year. If plans have merged and are making one filing, the funded percentage of the preceding plan year and the new funded percentage after the plan merger must also be reported. On the Schedule B, the plan's enrolled actuary must provide an explanation detailing the basis for all plan retirement assumptions. With respect to multiemployer plans, the plan sponsor must include in the filing the number of contributing employers in a plan as well as the number of employees in the plan who no longer have a contributing employer on their behalf must also be reported.

Summary Annual Report: The Summary Annual Report must be filed within 15 days after the deadline for the filing of the Annual Report.

Information to be made available: Section 502 requires that the trustees of a multiemployer plan make available upon request by any contributing employer, participant, or beneficiary, within 30 days of receipt by the plan sponsor, copies of all actuary reports and financial reports received by the plan for a plan year. Plans are permitted to charge reasonable fees for copying and mailing this information. The bill also states that the Secretary of Labor shall identify alternative methods of disclosure within 90 days from the date of enactment of the bill.

Withdrawal liability notice: This section gives contributing employers the right to a notice of the amount of their withdrawal liability. Only one notice can be provided within any 12-month period. The plan sponsor may make any reasonable charge to cover copying, mailing, and other costs attributable to furnishing such notice. This information must be provided within 180 days after a written request.

Sec. 503. Notice to participants and beneficiaries of section 4010 filings with the PBGC.

Section 503 makes changes to the requirements under Section 4010 of ERISA which require the reporting of actuarial and financial information by certain controlled groups with plans that have significant unfunded vested benefits. In general, the plan sponsor is required to report this actuarial and financial information if the aggregate funding target attainment percentage with respect to a controlled group for the preceding plan year is less than 60 percent. Additional requirements are established for single employer plans that will require the sponsoring employer to notify all participants and beneficiaries (including those participants and beneficiaries that are members of the sponsoring employer's controlled group), within 90 days after the 4010 filing is due, of the following information: (1) notification that a 4010 filing has been made for the plan year; (2) the number of plans maintained by the sponsoring employer (including plans maintained by any controlled group member) that are less than 60 percent funded, and (3)the assets, liabilities, and funded ratio for those plans that are less than 60 percent funded. The notice must also include, in the aggregate, the total values of plan assets and funding targets of such plans, taking into account only those benefits to which participants and beneficiaries have a nonforfeitable right as well as the aggregate funding target attainment percentage of the plan.

TITLE VI—INVESTMENT ADVICE

Sec. 601. Amendments to Employee Retirement Income Security Act of 1974 providing prohibited transaction exemption for provision of investment advice.

Section 601 provides a statutory exemption from the prohibited transaction rules of the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code (a new §408(b)(14) of ERISA and a new §4975(d)(14) of the IRC) for: (1) the provision of investment advice regarding plan assets subject to the direction of plan participants and beneficiaries plan to a plan, its participants and beneficiaries, (2) the sale, acquisition, or holding of securities or other property pursuant to such investment advice, and (3) the direct or indirect receipt of fees or other compensation in connection with providing the advice.

In order to qualify for the exemption, an entity must be a "fiduciary adviser" and must meet a series of detailed requirements. The bill defines the following regulated entities to qualify as fiduciary advisers: registered investment advisers, the trust department of banks or similar institutions, insurance companies, registered broker-dealers, and the affiliates, employees, agents, or registered representatives of those entities who satisfy the requirements of the applicable insurance, banking and securities laws with respect to the provision of such advice.

The fiduciary adviser, at a time reasonably contemporaneous with the initial delivery of investment advice on a security or other property, must provide a clear and conspicuous written (including electronic) disclosure of: (1) the fees or other compensation that the fiduciary adviser and its affiliates receive relating to the provision of investment advice or a resulting sale or acquisition of securities or other property (including from third parties); (2) any interest of the fiduciary adviser (and its affiliates) in any security or other property recommended, purchased or sold; (3) any limitation placed on the fiduciary's ability to provide advice; (4) the advisory services offered; and (5) the fact that that the adviser is acting as a fiduciary of the plan in connection with the provision of such advice; (6) any information required to be disclosed under applicable securities laws; and (7) the plan participant's right to seek advice from an unaffiliated adviser. This disclosure must be written in a way that the average plan participant could understand the information. This material must be maintained in currently accurate form. The Secretary of Labor will issue a model disclosure form.

Any investment advice provided to participants or beneficiaries may be implemented (through a purchase or sale of securities or other property) only at their direction.

The terms of the transaction must be at least as favorable to the plan as an arm's length transaction would be, and the compensation received by the fiduciary adviser (and its affiliates) in connection with any transaction must be reasonable. The fiduciary adviser must also provide a written acknowledgement that it is acting as a fiduciary of the plan to the plan sponsor.

Fiduciary advisers must comply with a six-year record-keeping requirement (for records necessary to determine whether the conditions of the exemption have been met).

A plan sponsor or other fiduciary that arranges for a fiduciary adviser to provide investment advice to participants and beneficiaries has no duty to monitor the specific investment advice given by the fiduciary adviser to any particular recipient of advice. The plan sponsor or other fiduciary retains the duty of prudent selection and periodic review of the fiduciary adviser. The fiduciary adviser must acknowledge in writing to the plan sponsor that it is acting as a fiduciary of the plan with respect to the advice provided.

Plan assets may be used to pay for the expenses of providing investment advice to participants and beneficiaries.

Sec. 602. Amendments to Internal Revenue Code of 1986 providing prohibited transaction exemption for provision of investment advice.

Section 602 conforms the Internal Revenue Code to allow for the provision of certain investment advice.

TITLE VII—DEDUCTION LIMITATIONS

Sec. 701. Increase in deduction limit for single-employer plans.

Section 701 provides for an increase in the deduction limit for single-employer plans to 150 percent of the plan's funding target plus the target normal cost.

The increase in the deduction limit for multiemployer plans is the excess of 140 percent of the plan's current liability over the value of plan assets.

Sec. 702. Updating deduction rules for combination of plans.

Section 702 modifies the rules relating to the limitation on deductions for plan sponsors maintaining both defined benefit and defined contribution plans. The bill provides that, in the case of employer contributions to one or more defined contribution plans, the limit shall only apply to the extent that such contributions exceed 6 percent of the compensation otherwise paid or accrued during the year to beneficiaries under the plan.